

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE.**

CRIMINAL WRIT PETITION NO. 1451 OF 2005

Tulsisingh Shravanumar Rajput ...Applicant
versus
Dr. Satya Pal Singh and ors. ...Respondent.

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Shri Amin H. Solkar for the petitioner

Shri B.H.Mehta APP for State

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**CORAM; V.G. PALSHIKAR &
R.C. CHAVAN, JJ.**

DTAED; 29TH JUNE, 2005.

P.C.

1. By this petition, the petitioner has challenged the action of the police in declaring the petitioner as absconded and applying for direction under the provisions of MCOCA.

2. The prayers read as under:

a) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order, striking down section 21(3) of the Maharashtra Control of Organised Crime Act, 1999 and other related provisions as ultra vires to the Constitution of India:

b) To quash and set aside the order of approval under section 23(1)(a) of MCOC Act, dated 6-12-2004 passed by respondent no.1 at Exhibit "A";

c) To quash the FIR dated 7-12-2004 registered at C.R.No. II-11/2004 with Talasari Police station at Exhibit "B".

d) To quash and set aside the order of issuance of Proclamation under section 23(1)(a) of MCOC Act dated 21-4-2004 passed by the Special (MCOC) Judge, Thane at Exhibit "E" (colly.)

e) To quash and set aside the Proclamation issued under section 82 of Cr.P.C. dated 28-4-2005 passed by the Special (MCOC) Judge, Thane at Exhibit "F".

f) To stay the execution of the proclamation issued under section 82 of Cr.P.C. dated 28-4-2005, passed by the Special (MCOC) Judge, Thane, at Exhibit "F" pending the hearing and final disposal of this petition.

g) To restrain the respondents from carrying on further investigation and from arresting the petitioner under the provisions of MCOC Act pending the hearing and final disposal of this petition.

h) To grant ad-interim reliefs in terms of prayer clauses (f) and (g) above.

i) To pass such other and further orders to grant such other and further reliefs as this Hon'ble court may deem fit and proper.

j) To award compensatory cost to the petitioner.

3. Prayer (a) deals with striking down section 21 (3) of the Act which was done before this court and this court has by reasoned order held that section to be valid. This prayer so far this court is concerned therefore does not survive.

4. Prayer (b) deals with challenging the order of approval granted under section 23 (1)(a) of the Act on

6-12-2004. This approval is granted by the Inspector General of Police, Konkan Range, in exercise of his powers under section 23 permitting the application of the provisions of MCOCA to the petitioner Tulsi Singh Rajput. As yet no charge in pursuance of this permission as granted is framed, the contention that no such permission could be granted as available to the petitioner for canvassing if and charge is sought to be framed. There is therefore no need at this stage to intervene as prayed for by prayer (b).

5. Prayer (c) deals with quashing of FIR dated 7-12-2004 lodged in Talasari police station. The law on the point of quashing of FIR is well settled and it has been laid down that unless the FIR as lodged does not make any offence of any kind, interference at the threshold by quashing the FIR should be avoided as far as possible. Present is the case where the affidavit-in-reply filed in this petition shows that the petitioner was involved in several crimes earlier. In such situation, in our opinion, quashing of FIR is not warranted. Hence there is no need to interfere as per prayer (c) is concerned.

6. In so far as prayer (d), it pertains to proclamation issued under section 23(1)(a) of the Act. Issuance of

proclamation can be questioned before the authority issuing it with a prayer to quash the same. That prayer is available to the petitioner, and no interference in writ jurisdiction is called for.

7. Prayer (e) deals with similar proclamation issued under section 82 of Cr.P.C. For the same reason in the forgoing paragraph the same need not be considered and is also rejected.

8. Rest of the prayers deals with interim reliefs. Since, we are not inclined to entertain threshold, the question of granting of interim relief does not arise. The petition therefore dismissed.

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